

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACEY SIMEON HALL,

Defendant-Appellant.

UNPUBLISHED

May 11, 2006

No. 259188

Monroe Circuit Court

LC No. 03-033216-FH

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for two counts of resisting/obstructing/assaulting an officer, MCL 750.81d(1), and one count of malicious destruction of police property, MCL 750.377b. We affirm.

A few weeks before his arrest on the present charges, defendant filed a civil suit claiming assault, battery, and negligence, among other allegations, arising from what defendant contends was a false arrest in April 2001. The defendants named in the civil suit included the Monroe County Sheriff's Department and the Monroe County Prosecutor's Office; among the named individual defendants was the son of Monroe Circuit Chief Judge William LaVoy, who was a deputy sheriff with the Monroe County Sheriff's Department.

Defendant's only issue on appeal is whether Judge Michael LaBeau erred when he declined to disqualify himself from presiding at defendant's criminal bench trial. Defendant maintains that Judge LaBeau created an appearance of impropriety when he heard defendant's trial, because defendant was suing several city and county agencies that frequently interacted with the Monroe Circuit Court, as well as the son of Chief Judge LaVoy, Judge LaBeau's colleague.

When reviewing a trial court's decision on a motion to disqualify a judge, we review for an abuse of discretion factual findings by the trial court, and review de novo the application of the facts to the relevant law. *Cain v Dep't of Corrections*, 451 Mich 470, 503 & n 38; 548 NW2d 210 (1996); *People v Wells*, 238 Mich App 383, 391; 605 NW2d 374 (1999).

A defendant's right to due process includes a right to have his case tried before an unbiased and impartial decisionmaker. *Cain, supra* at 497. Our Supreme Court has noted that "where the requirement of showing actual bias or prejudice under MCR 2.003(B)(1) has not been

met, or where the court rule is otherwise inapplicable, parties have pursued disqualification on the basis of the due process impartiality requirement.” *Id.* Defendant does not argue that Judge LaBeau could not have impartially heard his criminal case, the establishment of which is a prerequisite to disqualification under MCR 2.003. Therefore, defendant’s only other basis for his motion for disqualification is that Judge LaBeau violated his due process right to trial before an unbiased and impartial decisionmaker.

“Due process requires judicial disqualification without a showing of actual prejudice only in the most extreme cases.” *Van Buren Charter Twp v Garter Belt, Inc.*, 258 Mich App 594, 599; 673 NW2d 111 (2003). “The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where ‘experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.’” *Crampton v Dep’t of State*, 395 Mich 347, 351; 235 NW2d 352 (1975), quoting *Withrow v Larkin*, 421 US 35, 47; 95 S Ct 1456; 43 L Ed 2d 712 (1975). “Our Supreme Court has noted such situations include: where the judge (1) has a pecuniary interest in the outcome; (2) where the judge has been the subject of personal abuse or criticism from the party before him; (3) where the judge is enmeshed in other matters involving the complaining party; or (4) where the judge might have prejudged the case because of having previously acted as an accuser, fact-finder, or initial decisionmaker.” *Van Buren Twp, supra* at 600, quoting *Crampton, supra* at 351.

“Although not exclusive, the *Crampton* categories should be narrowly interpreted in light of examples provided by the Supreme Court and are ‘not to be viewed as catch-all provisions for petitioners desiring disqualification.’” *Van Buren Twp, supra* at 600, quoting *Cain, supra* at 500 n 36. The *Crampton* examples all indicate circumstances in which judicial disqualification is necessary because the judge has some sort of involvement in the case or some sort of interaction with the complaining party that goes beyond his normal professional involvement in the case, and such involvement might tempt the judge to unfairly take advantage of his authority to further his own interests or to harm the complaining party in some manner. Defendant’s concerns do not rise to this level or otherwise indicate Judge LaBeau oversaw defendant’s criminal trial in a biased manner. Regardless, “[t]he totality of the circumstances must be examined to determine if the present case is so extreme that due process requires disqualification without proof of actual bias.” *Van Buren Twp, supra* at 601.

Although defendant often claimed Judge LaBeau created an “appearance of impropriety” by presiding at defendant’s trial, our Supreme Court noted it does not recognize “appearance of impropriety” as the standard for judicial disqualification under due process. *Cain, supra* at 512 n 48. The *Cain* Court explained that the federal courts have found that, pursuant to federal statutes, “recusal will be justified either by actual bias or the appearance of bias.” *Id.* at 513 n 48, quoting *Yagman v Republic Ins*, 987 F2d 622, 626 (CA 9, 1993). However, these federal statutes provide more protection to parties than does the Constitution and, thus, “the federal ‘appearance of impropriety’ standard . . . is not the standard for disqualification under due process.” *Cain, supra* at 513 n 48. Our Supreme Court acknowledged that “there may be situations in which the appearance of impropriety on the part of a judge or decisionmaker is so strong as to rise to the level of a due process violation.” *Id.* Accordingly, this Court recognizes the “due process guarantee of an unbiased and impartial decisionmaker,” not the “appearance of impropriety,” as the correct standard under which to determine if a judge committed a due

process violation by refusing to disqualify himself from a case. *Id.* Therefore, Judge LaBeau would have erred in refusing to disqualify himself if he showed actual bias or if, by presiding at defendant's criminal trial, he created such a strong appearance of impropriety so as to violate defendant's due process rights.

Defendant bases his disqualification claim on indications that Judge LaBeau interacted with other judges and with city and county agencies pursuant to his role as a circuit court judge; defendant does not indicate that Judge LaBeau had a closer or more personal relationship with any of the individuals defendant named in his civil lawsuit. Further, although defendant alleges Judge LaBeau is subject to Chief Judge LaVoy's ultimate authority as chief judge, defendant fails to provide examples or otherwise indicate how this professional relationship might affect Judge LaBeau's ability to be impartial when hearing defendant's criminal case. Not only did defendant fail to allege actual bias, but he also failed to establish a "probability of actual bias" or an "appearance of impropriety" sufficient to overcome the presumption of judicial impartiality in this case. Consequently, Judge LaBeau did not violate defendant's due process right to trial before an impartial decisionmaker when he declined to disqualify himself from presiding over defendant's criminal trial. Because Judge LaBeau did not err when he declined to disqualify himself from presiding at defendant's criminal bench trial, we need not consider whether the entire Monroe Circuit bench should have been disqualified.

We affirm.

/s/ Bill Schuette
/s/ Richard A. Bandstra
/s/ Jessica R. Cooper